



IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

\* \* \*

AMERICOPTERS, LLC,

Plaintiff,

vs.

FEDERAL AVIATION ADMINISTRATION,

Defendant.

) COURT OF APPEALS  
) CASE NO.

) CIVIL CASE  
) NO. 03-00005

TRANSCRIPT OF PROCEEDINGS

BEFORE

THE HONORABLE JOHN S. UNPINGCO

MOTION TO DISMISS FOR  
LACK OF SUBJECT MATTER JURISDICTION

FRIDAY, AUGUST 1, 2003

Wanda M. Miles  
Official Court Reporter  
District Court of Guam

ORIGINAL

1     **APPEARANCES:**

2     **FOR THE PLAINTIFFS:**

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9     **FOR THE DEFENDANT:**

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Federal Aviation Administration  
Office of the Chief Counsel  
BY: KENNETH CAPLAN, Esq.

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1 HAGATNA, GUAM; FRIDAY, AUGUST 1, 2003; 10:33 A.M.

2 \* \* \*

3 THE CLERK: Civil Case 03-00002, Jan's  
4 Helicopter Service Inc. versus the Federal Aviation  
5 Administration, and Civil Case 03-00005, Americopters  
6 LLC versus Federal Aviation Administration, motion to  
7 dismiss for lack of subject matter jurisdiction.

8 Counsel, please state your appearances.

9 MR. SCHWAB: Your Honor, Mikel Schwab on  
10 behalf of the United States; and by courtesy of the  
11 Court, I have Kenneth Caplan on the phone as well.

12 THE COURT: Okay.

13 MR. LEDGER: Good morning, Your Honor. David  
14 Ledger on behalf of Americopters and on behalf of  
15 Jan's. And with me is Mr. John Walker representing  
16 both companies.

17 THE COURT: Mr. Caplan on the line?

18 MR. CAPLAN: Yes, sir.

19 THE COURT: State your appearance.

20 MR. CAPLAN: Kenneth Caplan, Office of Chief  
21 Counsel, Federal Aviation Administration.

22 THE COURT: Gentlemen, I've read the papers  
23 here. And, Mr. Caplan, I'm kind of disappointed in you  
24 in not including with your brief Air One Helicopters  
25 Inc. versus Federal Aviation Administration decided

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1 June 12, 1996; it seems to rule squarely against you.  
2 I'm kind of puzzled as to why you didn't include that  
3 in your brief. You do have an ethical obligation to  
4 this court; because we're only a territory doesn't mean  
5 we're not a Federal Court.

6 MR. CAPLAN: I understand, Your Honor. I  
7 don't believe the Air One Helicopters case is  
8 necessarily pertinent here, Your Honor.

9 MR. SCHWAB: Your Honor, if I may?

10 THE COURT: Yes.

11 MR. SCHWAB: The case of Air One Helicopters  
12 is something that I included. I ran across it last  
13 night and thought it was very relevant for one reason,  
14 and that's the underlying charge, that the bureaucratic  
15 snag can be treated as a final order.

16 THE COURT: That's right.

17 MR. SCHWAB: It doesn't detract from our basic  
18 argument which is the argument I've also added with  
19 Mr. Caplan, it really doesn't detract from our basic  
20 argument that it belongs in the Ninth Circuit because  
21 it's the Ninth Circuit that gives relief in that --

22 THE COURT: Well, but the issue here is this  
23 is a bureaucracy, a bureaucratic snag, that's the core  
24 issue here. And that's what's shared by this case of  
25 Air One Helicopters.

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1           And, Mr. Caplan, I wish you'd take your  
2 blinders off because that's exactly what's happened  
3 here. And you argued this case so you knew it was a  
4 bureaucratic snag, and that's what we're facing here in  
5 these two cases before me today. So you're cautioned,  
6 you better start looking and look well at the cases  
7 that are relevant, especially those that you yourself  
8 argued before the Ninth Circuit, because I don't take  
9 it lightly when lawyers keep things away from the  
10 court, I think that's very unfair. And you have an  
11 ethical duty before this court to let known the  
12 authorities that are against you. You shouldn't let  
13 your -- or put your co-counsel in a position where he  
14 has to be the one speaking up for you. I don't like  
15 that at all, so you better change your ways.

16           MR. CAPLAN: I understand, Your Honor.

17           THE COURT: Now give me your best shot,  
18 defendant FAA. Who's speaking?

19           MR. CAPLAN: Your Honor, with respect to the  
20 case involving the Caribou aircraft, I believe that was  
21 Jan's Helicopter.

22           THE COURT: Yes.

23           MR. CAPLAN: The position of the agency is  
24 that, that in the first instance, in order to operate  
25 in the United States, in the U. S. territories and its

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1     possessions, a foreign registered aircraft, such as  
2     this one, requires economic authority from the  
3     Department of Transportation. And Jan's Helicopters  
4     did not seek and/or obtain that authority, and  
5     therefore the statement of the inspector to that effect  
6     was that the aircraft could not operate legally in the  
7     United States was the correct position. And that Jan's  
8     Helicopters remedy is simply to seek that authority  
9     from the Department of Transportation, which is of  
10    course separate and apart from the Federal Aviation  
11    Administration.

12           THE COURT: Yeah. But what you're saying to  
13    them, oh, in our opinion, by the way, is that this is  
14    not the final word on this thing. We're just telling  
15    you, go to another agency, but our opinion is not a  
16    final ruling on this, but you still can't land and use  
17    the facilities, that's the other half of the equation.

18           MR. CAPLAN: I don't believe that the  
19    statement from the inspector to that effect, and I  
20    think that was one ruse to the Airport Authority was --  
21    constituted a final action on the part of the agency.  
22    That was the inspector's opinion, and we would agree,  
23    at least from what I understand the nature of the  
24    operation that that was probably the correct opinion,  
25    because it was a commercial operation and required

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1 authority from the Department of Transportation, and it  
2 wasn't fair, and therefore, Jan's Helicopters could not  
3 operate legally under those circumstances. And that --  
4 but it wasn't a final agency decision, it wasn't an  
5 order that the agency itself considered to be final.

6 In fact, I believe it was the September letter  
7 from Mr. Balton, who is the regional counsel for the  
8 FAA for the Western Pacific Region, that made it very  
9 clear to Mr. Ledger that in neither of these cases were  
10 the actions of these inspectors to be considered to be  
11 final actions of the agency, because those inspectors  
12 weren't authorized to make those kinds of decisions,  
13 and that only he as the regional counsel or certain  
14 other individuals chosen or delegated could do so, and  
15 therefore, these were not decisions that were in effect  
16 binding on the plaintiffs in these cases.

17 THE COURT: Well, let me ask you something  
18 here, Mr. Caplan. Let's suppose that this outfit had  
19 chosen to violate Balton's letter and whatever other  
20 direction that they were given that's not a final order  
21 by the FAA, okay, let's suppose that they said, well,  
22 forget this, we'll still land anyway; what would happen  
23 to them?

24 MR. CAPLAN: If they chose to violate?

25 THE COURT: Yes.

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1           MR. CAPLAN: Then they would act at their  
2           peril, certainly, because the government, the FAA could  
3           certainly take appropriate action to seek either  
4           compliance through perhaps a cease and desist order, or  
5           perhaps seek an enforcement action to take punitive  
6           actions through either certificate action or civil  
7           penalty. They would act at their peril certainly.

8           THE COURT: Well, that's the problem. You  
9           have just said what is the problem here, they act at  
10          their peril, meaning that there are sanctions that can  
11          be imposed, court orders that can be imposed, possibly  
12          even contempt.

13          MR. CAPLAN: Yes, sir.

14          THE COURT: You're saying on the one hand  
15          that this is not a final action, you're saying you  
16          can't land, but on the other hand, you know, this is  
17          not a final order. Yet, if you violate this order I  
18          will smack your fingers and crush them. You know, how  
19          can you have it both ways? I have a great deal of  
20          difficulty with you talking out of both sides of your  
21          mouth in this kind of argument.

22          MR. CAPLAN: Your Honor, we don't believe  
23          we're doing so. We believe that in this case and under  
24          any statute or federal regulations, the persons that  
25          are subjected to it have an obligation to obey those

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1 regulations, those statutes, and act at their peril  
2 when they fail to do so. And that it doesn't require  
3 the agency to take affirmative action to seek  
4 prosecution, because that's part of the prosecutorial  
5 discretion here as to whether to act or not to act.

6 THE COURT: Well, you're side-stepping the  
7 issue here. The issue is that that action, regardless  
8 of whether you call it a final act, a final order or  
9 whatever, that action has consequences when it's  
10 violated, okay. But yet, you have issued that order  
11 without giving the required requisite hearing that's  
12 required under the statute. That's the issue here.  
13 You know, it's not -- prosecutorial discretion has  
14 nothing to do with it.

15 The issue here is whether this court has  
16 jurisdiction over this case, whether this ruling, or  
17 this letter or whatever, however you choose to  
18 characterize it, final response or whatever, is an  
19 order that should be appealed to the Ninth Circuit,  
20 whether this court has jurisdiction over that. That's  
21 the nub of the issue here. And it seems to me that you  
22 are saying, well, this is not a final order, on the one  
23 hand, but the District Court can't touch it because the  
24 Court of Appeals is the one with jurisdiction. See  
25 where I'm heading here?

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1 MR. CAPLAN: I think I understand, Your Honor.  
2 And I, with all due respect to the court, I don't think  
3 I agree with that, Your Honor.

4 THE COURT: Well, you don't have to agree with  
5 me, it's just that it seems to me the logic of it is  
6 very compelling. And I'm not angry at you, I'm just  
7 kind of excited, because I'm following this logic, and  
8 it's leading me to a bureaucratic snag.

9 Where are these people going to go? We're  
10 halfway around the world; where are these people going  
11 to go for direction? They've got to go to the local  
12 FAA person, FAA person shows them this order that has  
13 punitive sanctions, even criminal sanctions possibly  
14 based on what you have said, yet you maintain that that  
15 is not a final order appealable to the Ninth Circuit.  
16 What's the logic here?

17 MR. CAPLAN: Well, I understand what you're  
18 saying, Your Honor, but I believe that the answer is  
19 that there are times when that is -- in effect the  
20 result is that the government is not required to take  
21 affirmative action in these cases to resolve an issue.  
22 That the, in effect, the litigants here, the plaintiffs  
23 have been placed on notice by the federal government  
24 that if they engage in this action, it may, the opinion  
25 of at least knowledgeable officials, be inconsistent

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1 with the regulations and the statute, and that they act  
2 at their peril.

3 I don't think I can go much beyond that, sir.  
4 I understand what you're saying, though, that it places  
5 these activities in limbo, that they run the risk of  
6 being prosecuted perhaps, of having a cease and desist  
7 order taken against them. But, of course, if that  
8 happens, Your Honor, they will then have the  
9 opportunity to litigate the agency's position, and to  
10 argue that what they did was appropriate. It may  
11 affect their ability to take action in the meantime.  
12 They may take the risk but --

13 THE COURT: Yeah. Well, the main thing here  
14 is that it seems, we're looking at fairness here too,  
15 and that is, that for a governmental agency to have so  
16 much power and yet to be trying to, on the one hand to  
17 try to say, well, it's not really a final decision; on  
18 the other hand saying, well, you can't take us to the  
19 court in that jurisdiction, you've got to go to the  
20 Ninth Circuit. You know, we're out in the Western  
21 Pacific in the middle of nowhere.

22 And that's the other thing troubling me, is  
23 that for a governmental agency to be fence sitting,  
24 if I may use that term, fence sitting and then choosing  
25 the route, tactically choosing the route, when it's

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1 engaged in litigation, the route it's then going to  
2 ultimately take as to the characterization of its  
3 actions, you know, there's a question of fairness here.

4 MR. CAPLAN: May I respond to that, Your  
5 Honor?

6 THE COURT: Well, let me just finish my  
7 thought and then I'll give you an opportunity.

8 We're not a huge land mass out here, we're a  
9 bunch of scattered little specks in the ocean, and  
10 things like landing rights have a bit of value to them  
11 out here. You know, where else are they going to go?  
12 Of course they have to go through the FAA, and the FAA  
13 has to -- if the FAA is a regulatory agency, then, by  
14 gosh, act like a regulatory agency and state the  
15 decision, state the opinion and then let's go forward.  
16 But to do this kind of a thing is unfair, that is that,  
17 oh, this is just an advisory opinion, but you can't  
18 litigate it in District Court, you've got to go to the  
19 Court of Appeals. And what you're saying in the second  
20 part is that, but it is a final opinion. You see where  
21 I'm kind of really -- seems to be --

22 MR. CAPLAN: Yes, I understand, Your Honor.

23 THE COURT: I'm really, you know, that's hard  
24 to break out of. So enlighten me.

25 MR. CAPLAN: Well, Your Honor, I will try to.

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1 I think I would like to start by saying that  
2 assuming that, you know, that they're correct in their  
3 position that these were final positions, agency  
4 decisions and that they are judicially reviewable,  
5 I would like to go to the second point about where  
6 they're reviewable. And we believe, the agency  
7 believes that there is no question but they can only  
8 be reviewed by the Ninth Circuit, and that they  
9 certainly, the plaintiffs would certainly get a full  
10 and fair review by the Ninth Circuit.

11 And that they will be able to litigate these  
12 issues, not only litigate the issue of whether it was  
13 or was not a final decision, but if it were final  
14 decisions, whether the agency acted appropriately.  
15 But we believe, truly believe that that's where it  
16 needs to be litigated, not in District Court.

17 THE COURT: Okay. Anything else, Mr. Caplan?

18 MR. CAPLAN: Not from me, sir. And, Your  
19 Honor, I apologize deeply about the Air One, I did not  
20 intend at all to mislead the court, I do regret that  
21 very much.

22 THE COURT: Okay. Accepted. Anything else?

23 MR. SCHWAB: Your Honor, Mr. Caplan is being  
24 gracious. I should take full responsibility for any  
25 case that's cited or not cited; that was my signature

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1 and my submission. I do apologize. When I did look at  
2 it and discussed it with Mr. Caplan, he didn't object  
3 to my bringing it into court. It doesn't, of course,  
4 undermine our underlying argument that we're in the  
5 wrong court.

6 But as to this argument with Jan's Helicopter,  
7 everything Your Honor has been saying, I have to  
8 express some amusement because I've had the same  
9 concerns myself over the last two days of interaction  
10 with Mr. Caplan on this. But as to Jan's Helicopter,  
11 I think it's a little different than it is as to  
12 Americopters. In Jan's Helicopter, the analogy would  
13 be as if a policeman came in, saw someone renting a car  
14 and said, hey, you don't have a driver's license, he's  
15 not pulling them over, he's not giving them a ticket,  
16 he's just saying, you don't have a license.

17 And in Jan's Helicopter case, they've got  
18 a commercial airplane that's registered in the  
19 Philippines and they're doing business, and they say,  
20 hey, you need a license; the airport agrees they need a  
21 license, when I look at it I agree they need a license,  
22 and they need to go to Department of Transportation to  
23 get that. So going back to FAA and putting the hammer  
24 on them and saying, give us a final order, give us a  
25 hearing, is not appropriate. Go back to DOT. And

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1 we're just bystanders that are certainly official  
2 bystanders here saying, you're not supposed to be  
3 driving.

4 THE COURT: But let's take the logic to the  
5 other conclusion. What happens if they go to DOT and  
6 DOT says, well, we can only do so much for you, the  
7 rest is up to FAA because they control the air traffic  
8 or they control fines.

9 MR. SCHWAB: Then we're back at Americopters.

10 THE COURT: That's right.

11 MR. SCHWAB: We're in sort of the washing  
12 machine where you're spinning.

13 THE COURT: That's right, and we need to break  
14 out of it. That's all I'm looking for is a way to  
15 break out of this snag.

16 MR. SCHWAB: And without getting into the next  
17 case, I'll just say that that takes place in the Ninth  
18 Circuit.

19 THE COURT: Yes. So that's your position?

20 MR. SCHWAB: It is, Your Honor.

21 THE COURT: Thank you.

22 MR. SCHWAB: Thank you.

23 THE COURT: Let's hear from the plaintiffs.

24 Mr. Ledger.

25 MR. LEDGER: Good morning, Your Honor. Thank

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1 you.

2 So what we've heard so far, at least to some  
3 extent, is more of the same, more punting, more hit and  
4 run, more dodging, and an attempt to drag the court  
5 into trying to resolve the dispute on the merits. As  
6 to the reference to the DOT, it has nothing to do with  
7 the reason we're here this morning. We're here this  
8 morning on a jurisdictional argument.

9 And in terms of listening to what the court  
10 has had to say, in terms of the effect of the initial  
11 communications that were put out by the FAA, and as the  
12 court is aware, when we tried to utilize the  
13 administrative procedure to the letter we were told we  
14 weren't entitled to do that because the orders weren't  
15 final.

16 Now with respect to Jan's, I'd like to put  
17 something -- I'd like to put that case in a little bit  
18 clearer perspective, perhaps something that was lost on  
19 the court or was not indicated early on. And this in  
20 effect goes to one of our arguments that we're making  
21 in favor of jurisdiction, which is the deprivation of  
22 constitutional due process.

23 And it's Exhibit A in the Jan's case which is  
24 essentially the, call it what you want, we called it an  
25 order. That's the communication from Mr. Ziegler to

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1 the Airport Authority essentially grounding Caribou;  
2 and not only was there not any notice of that order  
3 given to Jan's. And Mr. Walker was the pilot of the  
4 aircraft on the day of this event, Mr. Walker went to  
5 the airport and crewed the airplane, prepared it to  
6 fly, taxied it to the runway, requested clearance from  
7 the Guam Airport Authority, and at that point was told,  
8 sorry, John, you're grounded, you can't fly. Well, why  
9 not.

10 Well, Mr. Walker goes back to his office,  
11 calls the airport, says, what's the problem. And in  
12 response to that question, Mr. Ziegler's e-mail was  
13 faxed to Mr. Walker.

14 Now, again, to put it in perspective of  
15 fairness, the man goes to the airport, crews and fuels  
16 his airplane to do basically what was amounting to a  
17 maintenance flight, had nothing to do with this  
18 underlying dispute as to whether it was a commercial  
19 activity authorized by DOT or not, and he's told he  
20 can't fly.

21 Now, the due process violation of that to me  
22 is pretty apparent. And whether or not there's  
23 jurisdiction in this court because the order was final  
24 or not final, or whether it's reviewable by the Ninth  
25 Circuit, there hasn't been any reply or contrary

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1 argument to the fact that we're entitled to be here to  
2 litigate that constitutional violation. There was no  
3 due process whatever, they didn't follow their own CFR.  
4 And in addition, the pilot goes out and fires up the  
5 airplane and was told he can't fly it.

6 So aside from any issue of whether the order  
7 was final, and obviously it's fence sitting and they're  
8 trying to have it both ways, there's no reason why we  
9 can't be here and litigate the constitutional  
10 violation; this court has jurisdiction over that claim.

11 I also notice in the papers that one of the  
12 end runs that they're attempting is that, well,  
13 Mr. Ziegler's order, letter, call it what you will,  
14 really didn't do anything. It was the Guam Airport  
15 Authority that shut the Caribou down, so if you've got  
16 a beef, take it to them. Well, that's pretty  
17 transparent. I mean, Mr. Ziegler sent a letter to the  
18 Airport Authority, this aircraft is not authorized to  
19 fly, the Airport Authority did what it was supposed to  
20 do and followed what Mr. Ziegler said, they grounded  
21 the airplane. So it's just ludicrous for them to come  
22 in here and say, well, it's not our problem, it's the  
23 Airport Authority's problem.

24 Again, the issue that's been raised with  
25 respect to whether or not the aircraft was authorized

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1 to do what it was doing under DOT regulation is just  
2 more of the same, more hit and run; that's the  
3 underlying merits of the case, and it has nothing to do  
4 with this morning's proceedings. It is a different  
5 subject, it is a different issue from the  
6 constitutional violation that we allege occurred.  
7 But that's for another day, it's not for this morning.

8 So I don't think that the FAA has in their  
9 verbal reply today come up with any compelling reason  
10 that the motion should be entertained, and we've asked  
11 the court to retain jurisdiction over the claims as  
12 stated in the complaint.

13 That's all I have, Your Honor. If the court  
14 has questions?

15 THE COURT: No, thank you. Your position was  
16 very well stated.

17 MR. LEDGER: Thank you.

18 THE COURT: Appreciate the way you have  
19 expressed it.

20 Any few words of rebuttal from the defense?  
21 This is their motion.

22 MR. SCHWAB: Your Honor, I would just disagree  
23 on one thing, that the hit and run analogy I think is  
24 incorrect. I think what the FAA is doing, which they  
25 have to do as officials, is point out the obvious;

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1 someone is operating on the tarmac without the proper  
2 permit, they have to say it. It looks that way to  
3 everyone who looks at it, it looks like they're  
4 registered in the Philippines, they're doing business  
5 by transporting things down to the islands, they're in  
6 commerce. The FAA, unlike in the Americopters case,  
7 isn't the one that grants the relief on that, it's the  
8 Department of Transportation.

9 Thank you, Your Honor.

10 THE COURT: Thank you. Okay. The court is  
11 going to rule, and then follow up with a more complete  
12 ruling -- I shouldn't say more complete ruling -- it  
13 will rule, and it will expand on the rationale of its  
14 ruling in a written order to follow.

15 The court's first ruling is that the Zeigler  
16 July 31st, 2002 e-mail which resulted in the grounding  
17 of the Caribou and Inspector Kanae's June 24th, 2002  
18 letter directing that Americopters cease and desist its  
19 operations both possessed the requisite finality. Both  
20 of these actions by the FAA denied the plaintiffs  
21 rights that they previously enjoyed.

22 As proof of the definiteness of the FAA's  
23 position on September 19, 2002, Regional Counsel Balton  
24 issued a final response denying Mr. Ledger's repeated  
25 requests for hearings. The Ziegler e-mail and Kanae

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1 letter had a direct and immediate effect on the day to  
2 day operations of plaintiffs' business. In fact, upon  
3 receiving the Ziegler e-mail, Guam Airport Authority  
4 immediately complied with its terms by grounding the  
5 Caribou and denying the aircraft and its crew access to  
6 the taxiway and runway. Additionally, Americopters  
7 shut down its operations from Chuck's Steak House and  
8 conducted its flight operations from another location  
9 on Guam. Clearly, the FAA's actions are final orders  
10 within the meaning of Section 46110(a).

11 Accordingly, jurisdiction in this case is  
12 proper with the Ninth Circuit Court of Appeals. And as  
13 to the paucity of the record in this case, this record  
14 is sufficient to permit the Ninth Circuit to evaluate  
15 the Plaintiff's claims. Reference Southern California  
16 Aerial Advertisers Association, 881 F.2d at 676.

17 As far as the constitutional challenge,  
18 plaintiff contends that they're challenging the  
19 constitutionality of the FAA act, the court rules that  
20 while that may be so, it's still so inextricably  
21 intertwined with the procedures and other merits -- so  
22 inescapably intertwined with FAA procedures and merits  
23 surrounding the FAA's orders. And so the subject  
24 matter jurisdiction is properly vested exclusively in  
25 the Ninth Circuit Court of Appeals as mandated by

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1 Section 46110(a). Therefore, the motion to dismiss is  
2 granted.

3 I would like to say that I would love to hear  
4 this case. I think that government agencies need to  
5 take a stance on what it is that they're supposed to be  
6 doing. And this placement of people in a state of  
7 limbo, whether inadvertent or purposeful, is something  
8 that really does a disservice to all government  
9 agencies who really have a genuinely, a genuinely  
10 meritorious oversight function and regulatory function.  
11 So, however, the court's hands are tied on this one,  
12 the precedent is compelling that it is the Ninth  
13 Circuit. And the court's ruling that these orders are  
14 indeed final orders, or these letters are final orders,  
15 compels the conclusions that the court has drawn.

16 I will follow up with a more comprehensive  
17 written order that expands on the rationale, but I  
18 don't like to keep you people hanging. But this is a  
19 very interesting case, compelling reasons. I thought I  
20 was going to sleep last night but it kept me awake  
21 longer than I had intended. And my compliments to both  
22 sides. But I do hope that this matter is pursued  
23 vigorously, because this is a kind of an issue as a  
24 practical matter we out here in the middle of the  
25 Western Pacific, we really need to get finalized

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1 because of the scarcity of facilities here, and  
2 alternate facilities, and this will be a very important  
3 issue.

4 Thank you very much to both sides.

5 MR. LEDGER: Your Honor, I would just like to  
6 bring one issue to the court's attention, and that is,  
7 although I haven't looked in great detail at perhaps  
8 some time deadlines that we would be required to meet  
9 with respect to agency administrative actions and  
10 filing in the Ninth Circuit, and what I'm asking the  
11 court to clarify is that as of today the court has  
12 deemed the Kanae correspondence and the Ziegler  
13 correspondence to be --

14 THE COURT: Final orders.

15 MR. LEDGER: -- final orders that have been  
16 fully adjudicated by the administrative process and now  
17 ripe for review by the Ninth Circuit.

18 THE COURT: Yes. Well, I've made the ruling,  
19 but it's not official until we have entered the order.  
20 That's my understanding.

21 MR. LEDGER: That's fine, Your Honor. We'll  
22 wait.

23 THE COURT: But I will be coming out with the  
24 order fairly quick, you can rest assured, by next week,  
25 one week at the latest, hopefully sooner. I do want to

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1 see this issue get up to the Ninth Circuit fairly  
2 quickly because I think it's an important issue. In  
3 looking at, reading the case law, it's something that  
4 needs to be clarified further, and hopefully the  
5 availability of the administrative procedures will be  
6 both clarified and made much more pertinent.

7 MR. LEDGER: We've heard what the court has to  
8 say this morning and the efforts of the court are not  
9 being wasted because the issue will be taken out once  
10 the written decision comes out.

11 THE COURT: I believe I have voiced some  
12 strong concerns on this. I'm not angry at anybody, I  
13 get kind of excited when I'm grappling with an issue  
14 that I think is so intriguing, and I think this is one  
15 of those issues that deserves both. And I do wish both  
16 sides the very best.

17 MR. LEDGER: Thank you.

18 THE COURT: Thank you very much.

19 MR. CAPLAN: Thank you, Your Honor.

20 (Proceedings concluded at 11:03 a.m.)

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Official Court Reporter  
District Court of Guam



## CERTIFICATE OF REPORTER

CITY OF AGANA )  
 ) ss.  
TERRITORY OF GUAM )

I, Wanda M. Miles, Official Court Reporter  
of the District Court of Guam, do hereby certify the  
foregoing pages 1-24, inclusive, to be a true and  
correct transcript of the shorthand notes taken by me  
of the within-entitled proceedings, at the date and  
time therein set forth.

Dated this 20th day of August, 2003.

Wanda M. Miles

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Official Court Reporter  
District Court of Guam